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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,027	01/19/2000	Paul E. Di Mario	5333USA	2627
7590	04/08/2004		EXAMINER	
John A O'Toole Esq General Mills Post Office Box 1113 Minneapolis, MN 55440			HARMON, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			3721	29
DATE MAILED: 04/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/487,027	DI MARIO ET AL.
	Examiner	Art Unit
	Christopher R Harmon	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 February 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9, 35, 36 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) 41-50 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9, 35-36, and 38-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "has a vector that projects between..." is unclear and indefinite. The vector has no directional definition and could represent any degree of angle of projection. A more clear limitation would define an axis of movement (elevator) and describe elements in relation to it.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 35-36, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al. (US 4,179,866).

Graham et al. disclose a case packer comprising a box erecting apparatus (not shown in detail, see column 1, lines 35-38 - inclusion of US 3,739,696), elevator lift

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apparatus supported by cylinder 30, support mechanisms 43 and 44, case sealer/gluer 52, case magazine/supplier 6; see figures 8-10. The elevator lifts at least one good 24 into opened-bottom erected cases (cardboard) 11 and returns to a loading position after support mechanisms 43 and 44 directly support the products in the case 11 substantially over the top of the elevator mechanism; see figure 10. The support mechanisms 43 and 44 operate between two positions; see figures 9-10. The box top flaps are also folded; see column 3, lines 3-8. Box erector apparatus comprises suction cups 47 and 50; see US 3,739,696 (incorporated by Graham et al.)

Even though the box of Graham et al. does have flaps the apparatus and method of bottom loading containers is fully anticipated whether or not the box flaps exist. The respective preambles of claims 1 and 35 do not add structure to either claim.

Graham et al. do not directly disclose the elevator apparatus between the first and second opening devices however the Examiner takes OFFICIAL NOTICE that it would have been obvious to one of ordinary skill in the art to position the opening devices along conveyor 26 in order to maintain the containers in the open position.

5. Claims 1-5, 35-36, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al. (US 4,179,866) in view of Ako et al. (US 5,044,143).

Graham et al. do not directly disclose the elevator apparatus between the first and second opening devices however Ako et al. disclose opening containers by opposing suction opening devices 41; see figure 5a. It would have been obvious to one of ordinary skill in the art to use the teachings of Ako et al. in the invention to Graham et al. for opening the containers reliably.

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6. Alternatively, claims 1 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbulesco et al. (US 5,115,625).

Barbulesco anticipates all the claimed limitations except for an elevator inserting products between first and second opening devices. The opening devices 26 and 28 of Barbulesco are not opposing one another in the second (open) position; see figure 2 (suction device 28 pivots on pivot axis 29). The examiner takes OFFICIAL NOTICE that it would have been obvious to one of ordinary skill in the art to substitute a pivoting member contacting the opposing sidewall of the container in order to open the container.

7. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al. (US 4,179,866) in view of Reinfeld et al. (US 4,550,549).

The invention of Graham et al. does not specifically include a labeling apparatus operatively connected to the finishing apparatus. Reinfeld et al. teach a labeling apparatus in the apparatus and method of packing articles operating on completed containers 52 along discharge conveyor 80; see figure 14, column 5, lines 52-56. It would have been obvious of one of ordinary skill in the art to include the use of a labeling apparatus as taught by Reinfeld et al. in the invention of Graham et al. in order to mark a package as desired.

Regarding the limitations of a first and second feed conveyors of claims 7 and 8, Graham et al. disclose first load conveyor 21 and second conveyor 26 on separate planes.

8. Alternatively, claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al. (US 4,179,866) in view of Ako et al. in further view of Reinfeld et al. (US 4,550,549). See above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EUGENE KIM
PRIMARY EXAMINER